IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1013 OF 2005

WITH

CIVIL APPLICATION NO. 1201 OF 2005

Mrs. Poonam Sachin Deshpande ...Appellant

Versus

Sachin Raghunath Deshpande ...Respondents

Mr.V.Z. Kankaria for the Appellant.
Mr. Anil Sale for the Respondent.

CORAM: **DR. D.Y. CHANDRACHUD, J.**

DATE: DECEMBER 21, 2005.

P.C.

Admit. Counsel appearing on behalf of the Respondent waives service. By consent, taken up for hearing and final disposal.

2. The marriage between the Appellant and the Respondent was solemnised on 27th June, 2004 at Jalgaon according to Hindu Vedic Rites. The Appellant and the Respondent resided together until 11th April, 2005.

3. The Appellant has instituted a suit on 16th June, 2005 in the Court of the Civil Judge, Senior Division, Kalyan, for the grant of maintenance under the provisions of the Hindu Adoptions and Maintenance Act, 1956.

The marriage between the parties was performed at Jalgaon and after the marriage parties co-habited at the matrimonial home. However, the case of the Appellant is that she was treated with cruelty by the Respondent and the members of his family. For the purpose of these proceedings, it is not necessary to inquire into all the allegations which have been levelled, since the merits of the case of the Appellant would be considered when the suit is taken up for trial. However, it would be material to note that the sum and substance of the case of the Appellant is that on 10th April, 2005, she was threatened by the Respondent and was told that her life would be in danger, if she were not able to meet a demand for money made from her parents. At that stage, the Appellant called her father and on 11th April, 2005, she was constrained to leave for her parental home.

4. The Respondent filed his written statement and on 1st September, 2005, moved an application under Section 9-A of the Civil Procedure Code to take a preliminary objection on jurisdiction. A preliminary issue was framed by the Learned Trial Judge. By his order dated 23rd September,2005 the Trial Judge has come to the conclusion that no part of the cause of action had arisen within the jurisdiction of the Court of the Civil Judge, Senior Division, Kalyan. The Learned Trial Judge was of the view that the marriage was solemnised at Jalgaon, parties last resided there and, therefore, the Court at Kalyan has no jurisdiction to try the suit.

5. On behalf of the Appellant, reliance has been placed on a judgment of this Court in *Sucheta Dilip Ghate and another* vs. *Dilip Shantaram Ghate* [2003 (4) Mh. L.J. 445] . That was a case where the marriage between the parties was solemnised at Pune and parties resided thereafter at Ahmedabad in the matrimonial home. A petition for maintenance under the Hindu Adoptions and Maintenance Act, 1956, was instituted in Pune and an objection was raised on the part of the Respondent regarding the jurisdiction of the Court at Pune. The Division Bench noted that the Hindu Adoptions and Maintenance Act makes no provision in regard to the jurisdiction of the Court to which an application for maintenance must be presented. However, the provisions of the Act are of a beneficial nature intended as they are to protect women and infirm old parents while in distress. Hence, according to the Division Bench, it could not be perceived by any stretch of imagination that such a person in distress would have to run from pillar to post for relief under the provisions of the Hindu Adoptions and Maintenance Act, if the husband or son, as the case may be, keeps on changing his residence or prefers to reside in a place away from the place of his wife or parents. This Court was of the view that recourse could be taken under the provisions of Section 20 (c) of the Code of Civil Procedure and the suit could be instituted in a Court within the local limits of whose jurisdiction the cause of action, wholly or in part arose. The Division Bench held that the cause of action had arisen in part at Pune and that the circumstances forming part of the infraction of the right of the Appellants

continued and exist at Pune.

6. There is merit in the submission of the Appellant that the principles laid down by the Division Bench would be attracted to this case as well. The case of the Appellant is that she was compelled to leave the matrimonial home at Jalgaon as a result of the cruelty to which she was subjected and that she was constrained to reside with her parents at Dombivili. A claim for maintenance under the Hindu Adoptions and Maintenance Act, 1956, proceeds on the foundation that a person who is liable to provide for maintenance in law has failed to discharge that legal obligation. In such a case, it is the failure of the person who is under a legal obligation to provide maintenance that compels the Claimant to reside at the place where it would be possible to lead her life in conditions of convenience and dignity. In the circumstances, the view which was taken by the Learned Trial Judge was erroneous and in the teeth of law which has been laid down by the Division Bench of this Court.

7. In the result, the Appeal is allowed. The order of the Learned Civil Judge, Senior Division, Kalyan dated 23rd September, 2005 is quashed and set aside. The preliminary issue shall accordingly stand answered with the finding that the Court of the Civil Judge, Senior Division, Kalyan, does have the territorial jurisdiction to entertain and try the suit.

8. In view of the disposal of the Appeal, Civil Application does not

survive and the same shall stand disposed of.